

FCC MAIL SECTION

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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-44

In the Matter of

Amendment of Section 73.202(b), RM-8602
 Table of Allotments,
 FM Broadcast Stations.
 (Fair Bluff, North Carolina)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 6, 1995;

Released: April 14, 1995

Comment Date: June 5, 1995

Reply Comment Date: June 20, 1995

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Atlantic Broadcasting Co., Inc. ("petitioner"), requesting the deletion of vacant and unapplied-for Channel 287A at Fair Bluff, North Carolina, or, in the alternative, the imposition of a site restriction on the Fair Bluff allotment, to accommodate petitioner's pending application to modify Station WDAR-FM's operation.

2. Atlantic is the licensee of Station WDAR-FM, Channel 288C3, Darlington, South Carolina. It states that Station WDAR-FM currently operates with a directional antenna to protect the Channel 287A allotment at Fair Bluff. However, according to the petitioner, if the Fair Bluff channel is deleted, Station WDAR-FM could operate omnidirectionally. Petitioner points out that a construction permit (BPH-890313MQ) had been issued to Great American Media Ltd. I for Station WWIR. However, that construction permit was cancelled on August 31, 1994, pursuant to the permittee's request. If Channel 287A is to be deleted from Fair Bluff, petitioner states that the community will not be deprived of its sole local aural transmission service since it will continue to receive such service from Station WJHB(AM). Alternatively, if an interest in use of Channel 287A at Fair Bluff is expressed, petitioner states that Station WDAR-FM could achieve its desired omnidirectional operation if a 13 kilometer east site restriction is imposed on Fair Bluff Channel 287A. Petitioner further states that the required city-grade service can be provided from the proposed restricted transmitter site.

3. We believe the public interest would be served by seeking comments on the proposed deletion or site restriction of Channel 287A at Fair Bluff since it could enable Station WDAR-FM to expand its coverage area. In accordance with Commission policy, if no party expresses an interest in use of Channel 287A at Fair Bluff, during the

comment period in this proceeding, we shall delete the channel for lack of interest. See *Silverton, Colorado*, 9 FCC Rcd 661 (1994), 9 FCC Rcd 4097 (1994).

Technical Summary

4. Channel 287A can be retained at Fair Bluff with a site restriction of 12.7 kilometers (7.9 miles) northeast, at coordinates 34-21-22 North Latitude and 78-54-36 West Longitude, to accommodate petitioner's pending application. Use of these coordinates shows a short-spacing to Station WYNA, Channel 285A, Tabor City, North Carolina, and Station WNMB, Channel 288A, North Myrtle Beach, South Carolina. However, Station WYNA has been modified to specify operation on Channel 285C3 and its community of license has been changed to Calabash, North Carolina, pursuant to MM Docket No. 93-249 (9 FCC Rcd 7857 (1994)), and Station WNMB's license has been modified to Channel 290C3, pursuant to MM Docket 89-326 (7 FCC Rcd 544 (1992)).¹

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Option I		
Fair Bluff, North Carolina	287A	--

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 5, 1995**, and reply comments on or before **June 20, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick, Esq.
 Smithwick & Belendiuk, P.C.
 1990 M Street, N.W., Suite 510
 Washington, D.C. 20036
 (Counsel to petitioner)

8. IT IS ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Notice of Proposed Rule Making* to the licensees of Station WYNA, Tabor City, NC, as follows: Great American Media, Inc., Station WYNA, P.O. Box 1151, Raleigh, NC 27602.

¹ An Application to Cover Construction Permit has been filed

by Station WNMB on May 3, 1994.

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.